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Application No. 10/666,171

JAN 16 2007

Docket No.: 65858-0024

REMARKS

Claims 1-21 are pending. Claims 1 and 8 are independent claims. No claims are amended herein. In the Final Office Action, claims 1, 2, 4-17, and 21 were rejected under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 6,522,998 ("Mazur") "and Mathwarehouse.com to show that the features claimed are inherent. See MPEP 2131.01." (Final Office Action, page 5.) Claims 3 and 18-20 were rejected under 35 USC § 103(a) as allegedly unpatentable over Mazur in view of Official Notice. (Final Office Action, page 8.)

The cited primary reference, Mazur, fails to teach or suggest numerous limitations of each of Applicant's independent claims. For at least the reasons stated below, the foregoing claim rejections should be reconsidered and withdrawn. Applicant believes this paper to be fully responsive to the Final Office Action inasmuch as reasons set forth herein are more than adequate to support the patentability of each of Applicant's rejected claims. However, Applicant reserves the right to set forth additional reasons supporting the patentability of his claims, including the patentability of dependent claims not explicitly addressed herein, in future papers, or in an appeal.

Argument

I. **"said first point selectively acting as a pivot point for said test dummy"**

Independent claim 1 recites in part "securing a test dummy at a first point that is both fixed with respect to said test dummy and fixed with respect to a fixed frame of reference, said first point selectively acting as a pivot point for said test dummy." Independent claim 8 recites in part "a first point fixed with respect to said test dummy and with respect to a fixed frame of reference, said first point selectively acting as a pivot point for said test dummy." While Mazur does disclose a test dummy, Mazur actually teaches against a "first point selectively acting as a pivot point for said test dummy" because Mazur teaches securing a seat on which a dummy rests to a pivot point. (E.g., Mazur, Fig. 4.) The system disclosed in Mazur would plainly be inoperative if both the seat and dummy were secured to a pivot point. For at least this reason, one of ordinary skill in the art clearly would have read Mazur as teaching against securing the test dummy disclosed therein to any one point, much less to a pivot point.

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With reference to his Figure 4, Mazur discloses that a "seat 12 is pivotally located on and moveable with the impact sled 10a at a pivot point 20." (Mazur, 3: 46-47.) The dummy may be secured to the seat by a seatbelt or Velcro. (Mazur, 4: 2-15.) However, Mazur's dummy is not secured to a pivot point and moreover clearly does not pivot. In fact, when the seat 12 is pivoted, it "contact(s) the stop 24 rapidly halting the motion of the seat," and "as a result of momentum transfer, the dummy 14 is urged away from the seat 12 in a forward direction as shown into the pre-impact position." (Mazur, 4: 24-32.) In other words, the goal of the invention disclosed in Mazur appears to be to cause "the dummy 14 [to be] urged away from the seat 12," (Mazur, 4: 29-30), to simulate "both pre-impact and impact conditions." (Mazur, 1: 63-64.) Mazur's Figures 2-7 all clearly show the test dummy 14 being urged away from the seat 12 with no one point acting as a pivot point. Clearly, if the dummy of Mazur was secured to a pivot point, the goal of simulating pre-impact conditions by effectively separating the dummy 14 from the seat 12 could not be achieved. Thus, not only does Mazur fail to teach or suggest "said first point selectively acting as a pivot point for said test dummy," but Mazur clearly teaches against this recitation.

Therefore, for at least the foregoing independent reasons, independent claims 1 and 8, as well as dependent claims 2-7 and 9-21 depending therefrom respectively, are in condition for allowance over the prior art of record.

II. "applying a linear force to a second point that is fixed with respect to said test dummy and offset from said first point"

Independent claim 1 recites in part "applying a linear force to a second point that is fixed with respect to said test dummy and offset from said first point." Independent claim 8 recites in part "a second point fixed with respect to said test dummy and offset with respect to said first point; . . . wherein application of a linear component of a force at said second point, . . . causes a measurable amount of forward-directed linear displacement of said second point with respect to said fixed frame of reference while pivoting said test dummy about said first point in both a forward and downward direction . . ." Mazur entirely fails to anticipate these recitations.

Mazur teaches at most applying a force to the seat 12, and not to any points relative to the test dummy 14. For example, Figure 5 of Mazur illustrates that "seat 12 is slidable on the track 38" and that a force may effectively be applied to seat 12 by releasing a spring 40. (Mazur, 5: 28-45.) Figure 6 shows springs 58 compressed by a latch mechanism for accelerating the seat 12. (Mazur,

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5: 56 - 6: 3.) In other words, the point of Mazur's invention is to accelerate the seat 12, and Mazur is wholly agnostic regarding applying the force that accelerates the seat 12 with respect to any portion of the test dummy 14. Thus, Mazur cannot teach or suggest "applying a linear force to a second point that is fixed with respect to said test dummy and offset from said first point" or "a second point fixed with respect to said test dummy and offset with respect to said first point; . . . wherein application of a linear component of a force at said second point, . . . causes a measurable amount of forward-directed linear displacement of said second point with respect to said fixed frame of reference while pivoting said test dummy about said first point in both a forward and downward direction . . ."

Therefore, for at least the foregoing further independent reasons, independent claims 1 and 8, as well as dependent claims 2-7 and 9-21 depending therefrom respectively, are in condition for allowance over the prior art of record.

III. "establishing a third point that is fixed with respect to said test dummy and offset from said first point and said second point"

Independent claim 1 recites in part "establishing a third point that is fixed with respect to said test dummy and offset from said first point and said second point." Independent claim 8 recites in part "a third point fixed with respect to said test dummy and offset with respect to said first point and said second point." As explained above, Mazur teaches neither "said first point" nor "said second point," and therefore cannot possibly teach or suggest a third point offset from the first and second points.

The Examiner asserted that the foregoing recitations of claims 1 and 8 were anticipated by "Fig[.] 5 dummy 14 before and after shown by arrow." (Final Office Action, page 5.) However, Mazur's Figure 5 simply shows the dummy 14 moving from the seat 12 as the seat 12 is stopped at point B after being accelerated from point A by release of spring 40. (See Mazur, 5: 42-52.) Mazur makes no teaching or suggestion at all of any point, much less the recited "third point," being established with respect to his dummy 14. Indeed, a casual inspection of Figure 5 of Mazur shows that the dummy 14 is not secured at any fixed point, that no linear force is applied to any point fixed with respect to the dummy 14, and at no point is established and displaced with respect to the dummy 14 and offset from the first and second points. Accordingly, Mazur plainly does not teach or suggest the respective recitations in claims 1 and 8 of "establishing a third point that is fixed with

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respect to said test dummy and offset from said first point and said second point" and "a third point fixed with respect to said test dummy and offset with respect to said first point and said second point."

Therefore, for at least the foregoing further independent reasons, independent claims 1 and 8, as well as dependent claims 2-7 and 9-21 depending therefrom respectively, are in condition for allowance over the prior art of record.

IV. "estimating an amount of said forward-directed displacement occurring at said third point . . ."

Independent claim 1 recites in part "estimating an amount of said forward-directed displacement occurring at said third point . . ." Independent claim 8 recites in part "said forward displacement of said third point being estimated . . ." The Examiner appears to have conceded that these limitations are not taught or suggested by Mazur, arguing that they are "an inherent feature." (Final Office Action, page 5.) The Examiner has asserted that the manner of estimating the displacement recited in Applicant's claims is inherent (Final Office Action, page 5). Applicant does not concede this assertion, and moreover, the Examiner has failed to meet the Office's burden of asserting, much less showing, that "estimating" displacement or displacement "being estimated" are themselves inherent in the context of the other elements of Applicant's claims. In fact, Mazur fails to teach or suggest estimating or measuring the displacement of any point. For at least this reason, a Section 102 rejection based on Mazur is improper.

The law allows a rejection based on inherency only when "the missing descriptive matter is necessarily present in the thing described in the reference." MPEP 2131.01(III) (citing Continental Can Co. USA v. Monsanto Co., 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991)). Here, the Examiner has made absolutely no showing that "estimating" displacement or displacement "being estimated" are necessarily present in the system disclosed by Mazur. In fact, as discussed above, the purpose of the invention of Mazur is to simulate "impact conditions." (Mazur, Abstract.) Therefore, the Examiner's inherency rejection is appropriate only if "estimating" displacement or displacement "being estimated" are inherent features of a device that simulates impact conditions. Applicant respectfully submits that such inherency clearly does not exist, and that moreover, no showing of such inherency has been made.

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Specifically, the Examiner made no showing that either "estimating an amount of said forward-directed displacement occurring at said third point" or "said forward displacement of said third point being estimated" is inherent. The Examiner's argument from inherency appears to be based on the Examiner's assertion that Applicant's claims allegedly recite well-known geometric properties to perform the recited estimation of displacement. (See Final Office Action, page 5.) However, even if Applicant is reciting use of well-known properties, use of such properties is not necessarily inherent, nor would use of well-known properties to estimate displacement make the estimation of displacement itself inherent. For at least this reason, the pending Section 102 rejection of Applicant's independent claims is improper and should be withdrawn.

Therefore, for at least the foregoing further independent reasons, independent claims 1 and 8, as well as dependent claims 2-7 and 9-21 depending therefrom respectively, are in condition for allowance over the prior art of record.

CONCLUSION

The cited primary reference, Mazur, fails to teach or suggest numerous limitations of each of Applicant's independent claims. For at least the foregoing reasons, all pending claims are believed to be in condition for allowance. If the Examiner disagrees or if the Examiner believes that any formal matters require attention, the Examiner is cordially invited to telephone the undersigned.

Applicant believes that no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. 65858-0024 from which the undersigned is authorized to draw.

Dated: January 16, 2007

Respectfully submitted,

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